

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA

v.

Criminal Action No. 5:08-00042

CHARLES EDWARD WISEMAN

DEFENDANT'S SUPPLEMENTAL SENTENCING MEMORANDUM

Defendant, Charles Edward Wiseman, submits this Supplemental Sentencing Memorandum to address a restitution claim which has previously been submitted by Tina Fontenot, a psychologist from Lewisburg, West Virginia.

A. Legal Objections

Mr. Wiseman objects to the Court's consideration of the proposed restitution sum of \$1,845 for counseling sessions for one of the child victims as set forth in Paragraph 114 of the final PSR. This amount was submitted by Tina Fontenot, a psychologist who has allegedly provided 19 counseling sessions to one of the child victims. This objection is raised due to Ms. Fontenot's failure to comply with this Court's Order to disclose her records relating towards her treatment to one of the children as well as documentation reflecting her receipt of \$1,845 from WVDHHR for past services rendered.

Counsel has made several attempts to obtain Ms. Fontenot's records. On February 11, 2009, counsel sent a request letter and copy of this Court's disclosure order via certified mail to Tina Fontenot's office address in Lewisburg. (Ex. A¹). As of the date of

¹ Counsel has not attached a copy of this Court's February 6, 2009 Order to Exhibit A since the same was entered as a sealed Order and identifies the treated

the filing of this Motion, Ms. Fontenot has not gone to the Lewisburg Post Office to accept delivery of the certified letter. On February 18, 2009, Patrick Lyons, an investigator with counsel's office delivered a second request letter and copy of this Court's disclosure order to Ms. Fontenot's office in Lewisburg. No one was present at Ms. Fontenot's office when Mr. Lyons arrived around mid-day. The materials were dropped into Ms. Fontenot's office through a mail slot on her door. Counsel has also left several detailed voice mail messages on Ms. Fontenot's office telephone requesting to discuss the disclosure of her records in this case. Counsel has not received any return phone calls from Ms. Fontenot or anyone in her office to discuss the situation. Peggy Adams, the Probation Officer for this case, has further advised counsel that Ms. Fontenot has not provided her with any of the requested materials and that she has heard nothing further from Ms. Fontenot.

Courts which have addressed the issue of ordering restitution for future treatment (such as psychological counseling) have done so only if that amount is readily ascertainable and can be ascertained to a reasonable degree of certainty. United States v. Doe, 488 F.3d 1154, 1160 (9th Cir. 2007); United States v. Julian, 242 F.3d 1245, 1247-1248 (10th Cir. 2001). In this instance, where the provider has apparently refused to comply with a Court order to disclose the underlying documentation that would support any claim for past and/or future restitution, there is no factual basis for this Court to conclude that the sum of \$1,845 was actually incurred for counseling services to one of the children as a direct result of the defendant's conduct. Likewise, there are no facts before this Court that would support any award for restitution to address future counseling needs.

juvenile by name.

Counsel is aware that the Government has subpoenaed Ms. Fontenot to appear at the defendant's sentencing hearing. Should Ms. Fontenot appear at the March 23, 2009 sentencing hearing, the defendant would object to the Court's consideration of her testimony where she has previously failed to turn over the requested documents for this case.

Respectfully submitted this 5th day of March, 2009.

CHARLES EDWARD WISEMAN

By Counsel

s/David R. Bungard
David R. Bungard Bar Number: 5739
Attorney for Defendant
Office of the Federal Public Defender
United States Courthouse
300 Virginia Street, East, Room 3400
Charleston, WV 25301
Telephone: (304) 347-3350
Facsimile: (304) 347-3356
E-mail: david_bungard@fd.org

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CHARLES EDWARD WISEMAN, JR.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **DEFENDANT'S SUPPLEMENTAL SENTENCING MEMORANDUM** has been electronically filed with the Clerk of Court this date using the CM/ECF system and served upon opposing counsel as follows:

VIA CM/ECF:

Karen B. Schommer, AUSA
Office of the United States Attorney
United States Courthouse, Room 4000
300 Virginia Street East
Charleston, West Virginia 25301
Telephone: (304) 345-2200
Facsimile: (304) 347-5104
Email: karen.bleattler@usdoj.gov

DATE: March 5, 2009

s/David R. Bungard
David R. Bungard Bar Number: 5739
Attorney for Defendant
Office of the Federal Public Defender
United States Courthouse
300 Virginia Street, East, Room 3400
Charleston, WV 25301
Telephone: (304) 347-3350
Facsimile: (304) 347-3356
E-mail: david_bungard@fd.org